

**ADVISORY  
Council On  
Historic  
Preservation**

NEW JERSEY

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The Old Post Office Building  
1100 Pennsylvania Avenue, NW, #809  
Washington, DC 20004

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NOV 19 1996

Mr. Dennis L. Merida, P.E.  
Division Administrator  
Federal Highway Administration  
840 Bear Tavern Road, Suite 310  
Trenton, NJ 08628-1019

REF: Highway Projects Programmatic Memorandum of Agreement  
Statewide, New Jersey


Dear Mr. Merida:

Enclosed is your copy of the fully executed Programmatic Agreement for the referenced projects. By carrying out the terms of the Agreement, you will have fulfilled your responsibilities under Section 106 of the National Historic Preservation Act and the Council's regulations. We recommend that you provide copies of the fully-executed agreement to the New Jersey State Historic Preservation Officer and the New Jersey Department of Transportation.

We commend the efforts of the New Jersey Division of the Federal Highway Administration, the New Jersey State Historic Preservation Officer, and the New Jersey Department of Transportation in concluding this agreement. We trust that this agreement will encourage continued interagency cooperation and timely consideration of those major projects which may adversely affect historic resources.

Thank you for your ongoing cooperation.

Sincerely,

  
Don L. Klima  
Director  
Office of Planning and Review

Enclosure

# **PROGRAMMATIC AGREEMENT**

**AMONG**

**THE FEDERAL HIGHWAY ADMINISTRATION  
THE NEW JERSEY STATE HISTORIC PRESERVATION OFFICER  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
and the  
NEW JERSEY DEPARTMENT OF TRANSPORTATION**

**WHEREAS, the New Jersey Department of Transportation (NJDOT) administers state and federally funded highway projects throughout the State of New Jersey as authorized by 23 USC 77; and**

**WHEREAS, the Division Administrator, Federal Highway Administration (FHWA) is the "Agency Official" responsible for compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.) and implementing regulations (36 CFR Part 800 as amended); and**

**WHEREAS, the FHWA has determined that certain transportation projects constitute "undertakings" which may result in changes in the character or use of historic properties and has consulted with the State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (Council) pursuant to 36 CFR §800.13; and**

**WHEREAS, the New Jersey Department of Transportation (NJDOT) employs qualified professional staff and consultants capable of completing many of the steps of the Section 106 review process on behalf of FHWA, and has a considerable track record of successful compliance with Section 106; and**

**WHEREAS, NJDOT has participated in the consultation, and has been invited to concur in this Programmatic Agreement (PA); and**

**WHEREAS, the definitions contained in 36 CFR §800.2 are appropriate to define the terms used in this agreement.**

**NOW, THEREFORE, the FHWA, the Council, and the NJ SHPO agree to the following stipulations in order to satisfy FHWA's Section 106 responsibilities for NJDOT-administered federal aid projects.**

## STIPULATIONS

The FHWA will ensure that the following measures are carried out

1. NJDOT, using staff and/or consultants meeting the *Secretary of the Interior's Professional Qualifications Standards* (48 FR 44738-9), will independently perform the work and consultation described in specific sections of 36 CFR §800.4 and §800.5 on behalf of the FHWA as follows:

### 36 CFR §800.4

- (a) Assessing information needs.
- (b) Locating historic properties.
- (c) Evaluating historical significance.
- (d) When no historic properties are found [notification of finding of "no properties"].
- (e) When historic properties are found [assessment of effects].

### 36 CFR §800.5

- (a) Applying the Criteria of Effect.
- (b) When no effect is found [notification of finding of "no effect"].
- (c) When an effect is found [application of the Criteria of Adverse Effect].
- (d) When the effect is not considered adverse--Obtain the State Historic Preservation Officer's concurrence

2. If consultation with the SHPO results in agreement on a finding of "no adverse effect", NJDOT will prepare documentation in support of the finding as described in 36 CFR § 800.8(a) and forward it to the FHWA. FHWA concurrence in the finding will be sufficient to conclude Section 106 consultation without further review by the Council.

3. If consultation results in a finding of "adverse effect" or if no agreement can be reached, work required to conclude the Section 106 consultation process will be completed by the FHWA as described in 36 CFR §800.5(e) *et seq.* Written documentation will be prepared by the NJDOT for use by the FHWA.


4. NJDOT will notify FHWA when a project falls under Subpart C-Special Provisions. Using information prepared by the NJDOT, FHWA will then take appropriate actions to implement Subpart C, Special Provisions, of the 36 CFR Part 800 regulations, especially as they apply to instances involving the protection of National Historic Landmarks (§800.10), the discovery of historic properties during the implementation of an undertaking (§800.11), and emergency undertakings (§800.12).

## **ADMINISTRATIVE CONDITIONS**

- 1. Applicability.** This agreement applies to all projects that are administered through the NJDOT and funded by the FHWA.
- 2. Disputes.** It is the intent of the FHWA to become actively involved in the resolution of disagreements pertinent to findings of eligibility and effects should they arise. Initially, FHWA will mediate between the NJDOT and SHPO to seek a solution. If no solution is reached, NJDOT and/or its consultants will prepare documentation in accordance with the provisions of 36 CFR Part 63 for transmittal by the FHWA to the Keeper of the National Register to resolve questions of eligibility. In order to resolve questions of effect, NJDOT and/or its consultants will prepare documentation in accordance with the provisions of 36 CFR §800.8(d) for transmittal by the FHWA to the Council for comment as required by 36 CFR §800.6.
- 3. Professional Qualifications.** All historic preservation work carried out pursuant to this agreement will be performed by or under the direct supervision of a person or persons meeting the Secretary of the Interior's Qualifications Standards, 48 FR 44738-9, for the discipline(s) required to complete the necessary work.
- 4. Monitoring.** The FHWA, the SHPO and the Council may monitor any activities carried out pursuant to this agreement, and the Council will review such activity if so requested. NJDOT will cooperate with the FHWA, the SHPO and the Council in carrying out these monitoring and review responsibilities.
- 5. Amendments.** Any party to this agreement may request that it be amended, whereupon the parties shall consult in accordance with 36 CFR §800.13 to consider such an amendment.
- 6. Termination.** Any party to this agreement may terminate it by providing thirty (30) days written notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreements on amendments or other actions that would avoid termination. In the event of termination, the FHWA will comply with 36 CFR §800.4 and §800.5 with respect to the undertakings covered in this agreement.
- 7. Default.** In the event that the FHWA or NJDOT cannot carry out the terms of this agreement, the FHWA will comply with 36 CFR §800.4 and §800.5.
- 8. Regulatory Revisions.** In the event that revised regulations are promulgated, it is the intent of the signatories of this agreement to continue to allow NJDOT and/or its consultants to independently conduct the work required in the equivalent provisions of the new regulations on behalf of the FHWA and to consult to amend this agreement accordingly.

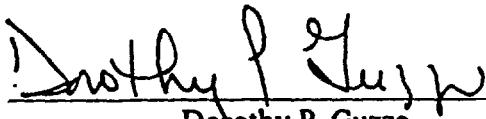
Execution and implementation of this Programmatic Agreement evidences that the FHWA has afforded the Council a reasonable opportunity to comment on the undertakings subject to this agreement, and that the FHWA has taken in to account the effects of such undertakings on historic properties.

FEDERAL HIGHWAY ADMINISTRATION

  
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Dennis L. Merida, P.E.  
Division Administrator

10/25/96  
Date

NEW JERSEY STATE HISTORIC PRESERVATION OFFICE

  
\_\_\_\_\_  
Dorothy P. Guzzo  
Deputy State Historic Preservation Officer


9-27-96  
Date

ADVISORY COUNCIL ON HISTORIC PRESERVATION

  
\_\_\_\_\_  
Cathryn B. Slater  
Chairman

11-13-96  
Date

NEW JERSEY DEPARTMENT OF TRANSPORTATION

  
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Russell D. Tong, P.E.  
Assistant Commissioner  
Capital Program Management

9/26/96  
Date